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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/816,467	03/26/2001	Laurent Coen	3495.0174-01	7062
22852	7590	10/20/2003	EXAMINER	
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 1300 I STREET, NW WASHINGTON, DC 20005			CHEN, SHIN LIN	
			ART UNIT	PAPER NUMBER
			1632	

DATE MAILED: 10/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/816,467

Applicant(s)

COEN ET AL.

Examiner

Shin-Lin Chen

Art Unit

1632

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 29 August 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.

Claim(s) objected to: None.

Claim(s) rejected: 17-19, 21-23, 34 and 35.

Claim(s) withdrawn from consideration: 1-16 and 24-33.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

Shin-Lin Chen  
Primary Examiner  
Art Unit: 1632



Continuation of 2. NOTE: The amendment filed 8-29-03 states "Applicants have canceled claims 17 and 18 obviating this rejection" (see page 6, lines 4-5). However, the newly added claims 36-44 depend on either claim 17 or 18. It is unclear what is intended to be claimed for claims 36-44.

Continuation of 5. does NOT place the application in condition for allowance because: Applicants argue that Mueller teaches using only fragment C of tetanus toxin for transferring gene and Hohne-Zell does not cure the deficiencies of Mueller (amendment, p. 8-10). This is not found persuasive because of the reasons of record. The claims are directed to a hybrid fragment of tetanus toxin "comprising" a fragment C and a fragment B or a fraction of fragment B at least 11 amino acid residues, therefore, the claims include using the whole tetanus toxin. Mueller teaches that tetanus toxin is uniquely specific for uptake into neurons and enters the central nervous system from the circulation with the highest efficiency of any known protein. Although Mueller may teach that fragment C of tetanus toxin is sufficient for gene transfer, however, Mueller also teaches that whole tetanus toxin can be used for transferring gene. Further, Hohne-Zell teaches zinc and the putative zinc-binding domain constitute the active site of the tetanus toxin light chain and replacement of histidine (position 233) by cysteine or valine and of glutamate (position 234) by glutamine completely abolished the activity of light chain on calcium induced catecholamine release. Therefore, it would have been obvious for one of ordinary skill at the time of the invention to practice the claimed invention according to the collective teachings of Mueller and Hohne-Zell.